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REPORT

OF

Certain Medico-Legal Cases.

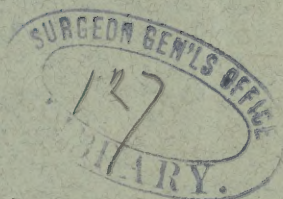
BY

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REPORT ON CERTAIN MEDICO-LEGAL CASES.

[The following cases are reported and attention called to certain points developed by them, not in the spirit of personal criticisms of any individual, but simply that the attention of physicians and those interested may be directed to the necessity of taking some steps to remedy conditions in connection with some expert testimony which all must admit to be wrong. For the last five or seven years, especially, much has been said about the evils arising from such testimony, both as regards the attorney and physician, but the most good that has been accomplished has been by sharpening the perception and controlling the egotistical daring of experts by the reports of such cases as that of Mendicott, Schaffe, Whar-ton, etc.]

While there are a great many points in toxicology not fully understood, there is still a great deal known upon the subject, and received by authority, that needs to be brought pointedly to the minds of not only special and general practitioners, but of experts. Professors Reese and Wormley have (outside of their published systematic treatise) done much to bring special points of interest more fully before the profession.

We propose in this paper to mention some things that have come under our own observation, thoughts that have been thrust upon us by experience.

In this city a man was accused of poisoning his wife by strychnia. We will first give a synopsis of the hypothetical case put by the attorney, and afterwards that of the testimony relevant to the points we wish to discuss. The following is the gist of the case as presented by the attorney for the State:

"Suppose that a woman about 50 years of age had suffered from neuralgia of the stomach for some time, but for several weeks had been much better. She was in the habit of taking morphine to allay the pain; she had been up all day attending to her household duties; was out at the gate at six o'clock P. M., conversing with her neighbors; between seven and eight o'clock her husband gave her, in a glass stained by tincture of iron, a powder dissolved in water; within a few minutes after she be-

came sick; her neighbors gathered in after eight o'clock and found her in a convulsion; the doctor arrived about half past eight o'clock; she said a brownish-colored powder had been given her; that it was as bitter as quinine and made her sick, and that she had a bad spell and felt so queer, and said she would die if they let her have those spasms any more; her pulse was accelerated; her respiration was hurried, her face and lips of a livid color; her countenance indicated fear; she had lain in bed for an hour; when the doctor arrived she lay on her back; her arms were naturally extended at her side; there was a slight flexion of the fingers; in about ten or fifteen minutes another convulsion followed which was tonic in character; eyes open, pupils dilated, a wild look in the face, clenched hands, body and feet stretched out with violent cramps, head thrown back, arms drawn over chest, drawing of the corners of the mouth, body and face of a livid hue; the convulsions lasted from a half minute to two minutes, with decreased intermissions, until half past ten o'clock, when she died in a convulsion; the first evidence of approaching convulsions appeared in the fingers, arms and lower limbs, afterwards extending over the body, and then to the face and jaws, each convulsion coming on in a similar way; they were followed by relaxation and full consciousness; a dose of chloroform, about 40 drops, was given her about nine o'clock, or a little later, and sometime afterwards, not more than 60 drops more was given; she once asked to be turned over; when a convulsion were coming on she asked to be held; asked for water, and when her lips were touched with the spoon containing the water, she went into a convulsion; a slight touch, and a person walking across the room, thus slightly shaking the house, each brought on a convulsion; she perspired before her death; when dead, the body was in a relaxed condition, but soon afterwards it became stiff, and so continued for a number of days after death; before the manifestation of these systems, she had no trouble of this kind, and was suffering only from neuralgia of the stomach.

"From the symptoms and facts, what, in your opinion, was the cause of her death?"

The hypothetical case put by the defense only differs slightly from this, except that "no examination of the stomach, kidneys, bladder or womb was made, or at least none was reported." The stomach, however, had been examined, and no poison found.

To the first of these hypotheses, a very well-informed chemical expert assumed "that it would cover almost the entire ground" of a case of strychnia poisoning; that at least only one symptom mentioned was out of the general rule in such cases, viz.: the interval between the paroxysms being at first from ten to fifteen minutes."

To the second hypothesis, his answer was "that death might possibly be caused from uræmic poisoning or from hysterical convulsions;" also that such convulsions might be produced by morphine, the action of morphine and strychnia often being so similar as to be mistaken one for the other, although this same witness, in the preliminary examination (before the grand jury), having been summoned by the prosecution, testified that "*there was no similarity between the effect produced by the two articles!!!*" Upon the point of the detection of strychnia, he said the ten thousandth part of a grain could, and ought to be, found in any case of poisoning by strychnia, under any circumstances.

An expert of good authority made answer that, "in his opinion, it could, under the hypothesis, be nothing but a case of strychnia poisoning," that "while uræmic poisoning produced tetanic convulsions, etc., the time at which death occurred eliminated a supposition of that kind from the case, as he was not aware that death had occurred in less time than two days from uræmic trouble."

The hypothesis of the defense did not produce any change in his answer. The symptoms and circumstances of the case were alone sufficient to form his opinion, as stated, without chemical examination.

Another physician examined answered, in the main, similarly, except that he was not so positive, and instanced one point in the symptoms that, according to his judgment, differed from a usual case of tetanic convulsions, viz.: the legs being in normal condition instead of being widely separated.

A chemist, giving the distinction between symptoms of strychnia poisoning and tetanus, both idiopathic and traumatic, gave it as his opinion that the hypothetical case presented was a typical one of strychnia poisoning; also, that morphia being present, it would obscure the test for strychnia, and that, to detect with certainty, we must separate the one from the other, and that the facts narrated in the hypothetical case pointed, even without a chemical analysis, to strychnia poisoning.

An extraordinary incident in the above case was that the expert whose testimony was reported first above, asserted that the stomach having been analyzed and no strychnia found (as we shall see because of a faulty analysis), therefore no strychnia was present; still the attorney for the defense, obtaining the glass from which the potion was given, gave it to the expert mentioned, for the examination of its contents. The chemist reported to the attorney that a large amount of strychnia was obtained from such glass; and yet this knowledge was kept entirely in the background, and the jury, by the testimony of the same expert, led to believe that no strychnia had been found, either in or out of the body. It was also proven that the accused had purchased strychnia, a few days previous, of a neighboring druggist; thus, all the circumstances and all symptoms pointed to death by strychnia, and that administered by the prisoner. The only point upon which acquittal was based was the fact that strychnia was not found, and, as we have seen, this was not proof of the absence of the article. After the case was over and the accused cleared, the fact of finding strychnia in the glass by the expert whose testimony went so far to acquit was gleefully narrated by the attorney as a proof of his own shrewdness.

Whatever the privileges of an attorney may be, the expert was certainly, in this case, placed in an unenviable position.

The above synopsis of evidence and results opens up numerous points of interest to medical witnesses, upon some of which the teachings of recognized authority, although in the main plain enough, needs to be collected and systematized, for the reason that medical men or attorneys fail to obtain the gist of such teaching. We do not say that experts cannot perform their work as well as those whose authority we follow, but they each, upon different subjects, consult different authorities, who present the thoughts in different language.

When we are called upon the witness stand, we should consult and reconcile all who are indeed authorities. This is what we wish to do in the following comments, as far as we go. Nothing new from us need be expected.

The following are the points we will notice, and call attention to authorities:

1st. Can strychnia, morphia, etc., taken into the stomach always be found, after proper and diligent search, in the contents or coats of the stomach, tissue or blood? With reference

to this question, consult Taylor's "Med. Jurisprudence," edition of '75, pages 691-693; here some of the poison was obtained from the stomach, but none from the tissue. Also, same page, where none was found. Page 694, the non-detection was held as no proof of its absence. Page 556, as to extraction of morphia.

Taylor, on poisons, pages 788-789, where this subject is elaborately discussed and similar conclusions arrived at, both as regards strychnia and morphia.

"Manual of Toxicology," by Prof. Reese, page 431, (from Prof. Casper) where grs. iii were found in the stomach, but none in the tissue or blood; also in same, page 433 (failure to detect), also second case, same page, where grs. vi were taken, examined six weeks after death; none found in stomach or elsewhere.

Wormley's "Micro Chemistry of Poisons," page 503, case of Dr. Christian, as to non-detection of opium, although it had been taken; in same page, 503, as to recovery of morphine from the tissues; page 591-592 as to the detection of strychnia in the coats of the stomach or tissues, which is considered very difficult.

Guy's "Forensic Medicine," page 549; he only combats the idea that strychnia is never to be detected in the *tissues* or *blood*, but says nothing as to the cases where it may not be found.

2d. In cases where strychnia, morphia, etc., are known to have been taken and not detected, how is such non-detectiveness accounted for?

The following are the causes laid down in all authorities:

1st. The nature of the poison, there being no known tests for it.

2d. Loss by vomiting, purging, etc. In most cases, however, the most violent vomiting does not dislodge the poison.

3d. Loss by absorption and elimination. In death by ziss of laudanum after six hours, no morphia or meconic acid was found. (See Christian case reported in Reese's "Toxicology," page 71). It was presumed that the non-detection was from this cause. So of cases in which strychnia was sought for when six grains were taken; death in six hours; none found by Dr. Reese.

It is very true that Woodman and Tidy, upon the authority of Dr. Rogers, say that in case of death by strychnia, and the victim dies within two or three hours, the poison should be found in the stomach, for although they admit that if death is delayed it may then be lost by elimination, they hold that the

time mentioned is not sufficient to permit loss in this manner.

The questions which will be more fully noticed in a case yet to be reported, as to what is meant by death must be taken into account in this connection, for certainly elimination from the stomach of an article in solution may go on even after *somatic* death; the capillaries and absorbents still continue to act, more rapidly in some cases than in others, according to the nature of the substance contained in the stomach, etc. The exact time when such action ceases in every case has not to our knowledge been ascertained, so we must view this testimony of Dr. Rogers in the light of such circumstances, and only conclude that in rapid somatic death (for that is what he means), the probabilities of the removal of the poison from the stomach by the process of elimination is rendered less.

4th. Decomposition of poison in blood or tissue. This is no doubt true in some; but as yet only probable as regards strychnia and morphia.

5th. Decomposition in the dead body. This is not considered probable as regards strychnia, for several months at least. Another cause not spoken of by some, but recognized by Wormley, Reese and others, and first noticed by Brieger in 1850, is the presence of certain substances, such as quinine, morphia, etc., where strychnia is sought for. It is certain that those substances will obscure, and some absolutely forbid reaction to tests upon strychnia. Morphia, in excess of strychnia, and when both are in minute quantities, will (according to those authorities) interfere with the reaction. It is true that this pre-supposes in our present state of knowledge an imperfect analysis, for the strychnia can be separated from the other articles, and should be in all cases. But suppose that by reason of a faulty analysis this should not be done, it would bear the same relation to the proof of strychnia in the stomach or tissues as do any of the causes of the failure in the detection of the poison, viz: it does not prove its absence, but leaves that question untouched. Such fact would have to be proven in other ways; thus the presence of morphia ought to be placed as another cause of the non-detection of strychnia.

The sum of the whole is that non-detection of poisons is no proof that it had not been taken, nor even that it was not then present.

Take the case of the State vs. Palmer, or the "Cook case," as it is termed. Palmer was convicted, although Dr. Taylor

failed to detect strychnia. It was held first that the stomach had been opened and contents removed, therefore no strychnia could be found. This would have been a true case of non-detection, other proof being ample as to its presence, but second, it was held that the mode of analysis was faulty, and that if a proper one had been made, strychnia might have been found; this objection was made by Dr. Letherby. If this was the case it would have been a true case of *non-detection*, but would only make the suspicion of death by poisoning stronger than if there had been a true and proper analysis. But again morphia was known to have been administered shortly before the pills supposed to contain strychnia; we have seen that morphia would (if in excess) interfere with the test of strychnia. This would be another cause of non-detection, and if we say the strychnia might and should have been separated from the morphia, it matters not; it, simply along with all other causes mentioned, left the indication of the presence of strychnia without the additional evidence of analysis; it was proper then in that case, *as it has been in many others*, that if all other proofs offered as to the administration of the drug with the intent to destroy, and as to the final cause of death should be made satisfactory to the minds of the jury, either of the coroner's or higher court, conviction should follow, notwithstanding the poison had not been found, it is true that finding it would be "confirmation strong" as to the cause of death, but it would not be certain proof even in the presence of all the other facts of the case, for not only have cases been recorded but it is a fact, any one can see at a glance, that poisons may and have been found in the body with convulsions and other symptoms very similar to those mentioned, and yet death did not result from such; for instance they might be given in medicinal doses, which fact might or might not have been known to those making the examination. In fact the analysis may not discover anything when there is something there, through some irremediable causes or by the fault of the analysis, or, on the other hand, discover something which may, without the greatest care, cause us to be misunderstood, and permit censure to fall when and where it ought not.

The facts thus obtained from an analysis are only to be viewed in the same light and bearing as others revealed throughout the whole history of the case. True, conviction may follow when

there has been no analysis, and a just acquittal where a true and proper analysis has revealed the presence of poisons.

In the "Cook case," where Palmer was accused of poisoning him, the symptoms and circumstances alone were relied upon to convict. (See Taylor on Poisons). It is true that it is seldom that these two items of testimony can be sufficient, but where the symptoms of strychnia poison have been minutely noticed from first to last, and in addition the circumstances point to a giving of some "deleterious" article, then in many cases we might be justified in regarding it as a case of strychnia poisoning. Whether criminal or not is another question according to other proof added. Certainly, however, in most cases extreme caution must be observed by experts in deciding as to the absolute cause of symptoms alone, or even in connection with suspicious circumstances, for instance, that the death was occasioned by some irritants, or where no signs of irritation exist, but the nervous system is powerfully impressed by some article, we often cannot assert positively without something more to rely upon than symptoms or circumstances, that arsenic has been the active agent.

CASE II.—Another case either illustrates the falsity of experts, or a woeful lapse of memory. In this city two men were suspected of the murder of a third; one was arrested at once. Upon trial the physician who attended the murdered man at the time of his injury, testified to his having found wounds upon the head, one necessarily fatal, two dangerous, one slight. Their positions, etc., were described from notes taken at the time. The same physician, in company with a second, made a post mortem examination of the murdered man, both signing the report. The *attending* physician testified that the skull was "fractured but not depressed," etc. His associate was not examined during that trial, but afterwards the second murderer was arrested and tried; the attorney defending summoned the physician who had *assisted* at the autopsy, and whose name was signed to the report. He asserted that he had examined the head of the deceased directly after the injury; that one serious wound and two or three slight abrasions were found; that the fatal wound was at the prominence of the parietal bone; that this had not only *fractured* the skull, but *depressed* it; in fact such a depression as would be made by the body of an ale bottle

(making an impression one and a-half or two inches in depth), with a fracture running to the base of the skull, where a clot of blood appeared. His recollection was *very* distinct, not only as to the form of the principal wound, but also that there was *no* wound at the junction of the sagittal and lambdoidal sutures. This could not be, he said, as these two sutures run *parallel* with each other!! there was none over the mastoid process. All this he was *certain* of, and ridiculed any reports that would state such facts, but when the prosecuting attorney showed the report of the autopsy, and asked him if he did not write such, and also sign it as his report, he at first replied "*yes,*" but it *certainly had been changed*; but when no alteration in the writing could be found, he explained the fact that he had reported a fracture, but no *depressions* of the skull, by saying that at the time he first examined him (before the autopsy) there "might have been a depression which had disappeared before the time of the autopsy!!" Such are the shifts men are driven to in such cases. Are they objects of pity or condemnation?

As to the language of the report that "a wound was found at the junction of the sagittal and lambdoidal sutures" he had nothing to say in view of his former assertion, "that such was impossible, they being parallel!!" Whether such a complete discomfiture was the result of ignorance or some other cause, we leave the reader to judge, after saying that this was the same expert that in the first case reported (strychnia poisoning), pretended to (or did), detect the strychnia in the glass given him by the attorney, and this before his testimony (that had much to do in clearing the accused) was given!! We feel humiliated while we write that we have such experts(?) among us.

CASE III.—Another point we wish to examine is whether a poison introduced into the stomach after somatic death, can produce like effects upon that organ to the same taken before death. At a certain trial in this city where a man was accused of poisoning his wife with arsenic in order to obtain the amount of a policy of insurance she held, the stomach and contents were analyzed, arsenic was found, but none of the adjacent viscera were examined; a small quantity of fluid mixed with mucus appeared in the stomach and upon the mucous membrane, which in places was of a reddish hue, small ecchymosed spots were seen. Such appearances were held to be due to the action of the arsenic.

The defense entered the plea that arsenic was introduced after death by parties interested in the insurance company, they having had the jar, which was improperly sealed in their possession for several days after the post mortem examination, to the exclusion of any friend of the accused. All the experts but one testified that the appearance of the stomach as described in the hypothetical case, indicated beyond a doubt that the arsenic was administered during life; the dissenting one testified that as death was a relative term, its meaning not embracing the cessation of "vitality" in the system, the same appearance in "kind" but not in "degree" could be produced by an irritant introduced into the stomach before such "vitality" had ceased, but as to the time of the cessation of such active processes he could not state, it lasting longer in some than in others, and indeed the time not having been definitely settled so as to make a general rule as to its length. This theory was held to be visionary, for "where a man was dead he was dead, and life having ceased nothing could impress any part of the system as before death," such was the reasoning. It is of great practical importance to toxicologists and jurors that this point should be understood, and first we must separate the idea of "somatic death" from the cessation of "vital action." It may seem strange that we are called upon to bring this point to the notice of experts at this time, but nevertheless we find an amount of forgetfulness that we would not have looked for, and that with gentlemen who were generally well posted. The very important fact noted by Dr. Reese, of Philadelphia, in his work on toxicology, and subsequently more fully as found in the *American Law Journal*, for February or March, 1878, as to the imbibition of poison by the organic tissues adjacent to the stomach, when the article had been placed in that organ after death, was touched upon in this trial, but the subject turned upon the effect of arsenic, etc., upon the coat of the stomach itself.

It is a physiological principle well established, that after the heart ceases to pulsate or the lungs to receive air, that the blood is forced through the capillaries by the same vital activity that causes it to circulate before such cessation of the central organs has taken place. This is the first step in the testimony as to the continuance of "vitality" after what we designate, in general terms "death," but experiment, however, shows that vital action continues in a greater or less degree for hours, nay, days, after

such a condition has been acknowledged. Of course we throw out of the count cases of suspended animation, trance, etc. If a body is found a few hours after death with wounds upon it, it often requires great skill to ascertain whether such were inflicted before or after the first steps in systemic death had commenced. Often the solution of the question is impossible. The effusion of lymph, the show of inflammatory action, discharge of blood, puffiness of the lips of the wound, etc., are held to indicate the act before death; the absence of these that it was after, but practically we are as often at fault as otherwise, in judging as to the time.

This fact is recognized by all toxicologists as well as physiologists. Orfila lays it down as a rule that often in twenty-four hours an irritant will produce none of its characteristic signs upon the stomach, "because the vitality of the capillaries has ceased" but experiment has not, to our knowledge, been extensive enough to establish the limit of time, although reasoning by analogy may seem to satisfy us that such suppositions are correct.

CASE IV.—Not only do mistakes, misunderstandings, the drawing of false conclusions from observed facts, etc., happen with attorneys, experts and the court, but jurors are liable to similar imperfections. While the teachings of attorneys or physicians are often to blame for this, still sometimes the false position is taken originally by the jurors. This shows most clearly how careful we should be and also how careless we often are. In a certain case an inquest was held upon the body of a man who had died after being confined to his bed during the day. The autopsy revealed the fact that both lungs were extremely diseased, the right one being completely disorganized, full of cavities and the cells impervious to air; the left one (except a very small portion of the upper lobe) being in the same condition. The physician (a man of small repute) testified that six weeks before, the patient came to him with cough, expectoration, want of respiratory murmur, etc., stating that he was taking in addition to other medicines, the contents of a certain powder, several of which he had with him. The physician, by inspection, found them to be composed of about one and one-half grains of morphine; these powders he continued to use to allay the cough and irritation, and they seemingly produced no bad effect. After an exhausting walk

upon Friday, he retired to bed until next day, when the physician was called and gave him one of the powders. It was proven that there was no mistake as to the quantity contained in each powder. He was suffering from pleuritic pains, coughs, and great exhaustion; seemed to doze but not sleep during the day, and finally died about 7 o'clock P. M., with nothing to indicate opium poisoning when the symptoms were analyzed. The stomach was given to a chemist, who found morphine. The brain was found to be in a condition that some who are not experienced would deem indicative of an inordinate amount of congestion, but, in fact, very slightly more than is found in eight-tenths of all cases of deaths from any cause.

Two physicians, who were present at the post-mortem examination, were examined. They insisted that the brain was highly congested, and, when asked if they could give a reasonable cause for such condition, both replied that it was from opium. The question remained with the jury (composed partly of physicians) how such a conclusion could be arrived at, for, if the brain was highly congested, might there not be other reasons under the circumstances to cause it? No other evidence was introduced, the case going to the jury. They decided that the individual came to his death "from natural causes," meaning, evidently, in consequence of the disorganization of both lungs.

The coroner and the physicians examined, all asserted they believed the patient to have been poisoned by morphine, and that the drug caused death, although they admitted that he could have lived but a short time longer with such a pathological condition. The fact that when he came to be treated by the physician accused of trying to destroy his life, he had been and was a user of morphine in large doses, and that, if he had not been, the first dose of one and one half to two grains would have produced alarming, if not fatal, symptoms, was overlooked, although, when their attention was called to the fact such a proposition was admitted as true. Still their opinions were fixed, and they departed questioning the correctness of the decision of the jury.

Such cases show us the need of better education upon pathological and toxicological subjects. The best practical physicians are very often almost, if not wholly, ignorant as to what, in a cadaver, ought to be regarded as a product of disease, etc.

And even more ignorant as to all the bearings of toxicologi-

cal questions. In this case, even, the fact that morphine had been found in the stomach by the chemist was brought forward as almost conclusive evidence that the patient had died from the effect of this drug, and even, as evidence, that it had been administered with criminal intent.

There is scarcely anything that shows more clearly than the above history the need of special knowledge, in deciding certain cases.

The teachings of the above cases are, as we take it, 1st. That the manner of calling experts, some by the prosecution and others by the defense, ought to be changed, because such a plan often acts injuriously as to right and justice, and brings disgrace upon the expert testimony; and, 2d. That knowledge goes hand in hand with honest purpose and cool courage, and as to knowledge, it is not every time the man who has seen the most or collected the most facts from personal experience that is the best adapted for such work. It makes no difference how the knowledge is gained, so he possesses it. The expert must have the tact to select what is recorded by others, as well as observed by himself, for a "walking encyclopedia" may be a very poor practical man.

As to honesty of purpose and cool courage, it is evident that, from the perusal of the above cases, we find that often experts may be honest, but ignorant; or they are rendered incompetent by dishonesty of purpose or by being confused or intimidated by counsel or surroundings. Now, in either of such cases, they certainly were not, at that time, true experts.

The time has come when, if the plan is permitted to continue in spite of the warning and contrary to the wishes of the medical profession, then the gigantic evil of *false expert testimony* must cease, by some means; and, if nothing else will stay its course, then the court record must be brought forth and arrayed before the profession, so that, if naught else will incite to *knowledge, honesty and courage*, fear of exposure must add its influence. This should, at least, be our object in all cases coming within the range of our observation. If we ourselves should trip, let some one perform that *opinion* for us, and in the same spirit of kindness that we propose to deal with others.

Duly

out question. In this case even the fact that morphine had been found in the stomach, by the chemical analysis, would be almost conclusive evidence that the patient had died from the effect of this drug and even as evidence that it had been administered with criminal intent.

There is scarcely anything that shows more clearly than the above history the need of special knowledge in deciding on this case.

The teaching of the above case is, as we have seen, that the manner of calling experts, some by the prosecution and others by the defense, ought to be changed, because such a plan often sets unfairly as to right and justice, and brings distrust upon the expert testimony; and, 2d, That knowledge goes hand in hand with honest purpose and cool courage, and as to knowledge it is not every time the man who has seen the most or collected the most facts from personal experience that is the best against the such work. It makes no difference how the knowledge is gained, so he possesses it. The expert must have the test to which what is recorded by others, as well as observed by himself, or a "writing encyclopedia" may be a very poor practical man.

As to honesty of purpose and cool courage, it is evident that from the history of the above case, we find that other experts may be honest but ignorant; or they are rendered incompetent by dishonesty of purpose or by being confused or intimidated by counsel or surroundings. Now, in either of such cases, they certainly were not at that time true experts.

The time has come when, if the plan is permitted to continue a split in the waiting and contrary to the wishes of the medical profession, then the legitimate end of this expert testimony must cease, by some means; and, it is nothing less than a waste of time, that the court should have to be brought back and answered before the profession, so that it might also will insist to avoid any honesty and courage, for of experts must add its influence. This should at least be our object in all cases coming within the range of our observation. If we ourselves should trip, let some one besides that offend for us and in the same spirit of kindness that we propose to deal with others.

